

FOR PURPOSE LAW GROUP

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOHN C. VERNILE,
Petitioner,
vs.
PACIFICA FOUNDATION INC., a
California Nonprofit Public Benefit
Corporation,
Respondent.

PACIFICA FOUNDATION INC., a
California Nonprofit Public Benefit
Corporation,
Cross-Petitioner,
vs.
JOHN C. VERNILE,
Cross-Respondent.

Case No. 2:22-cv-02599-SVW-PVC

**SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS
IN SUPPORT OF PACIFICA
FOUNDATION INC.'S MOTION
FOR SUMMARY JUDGMENT**

Date: August 22, 2022

Time: 1:30 PM

Courtroom: 10A

Judge: Hon. Stephen V. Wilson

Respondent and Cross-Petitioner, Pacifica Foundation Inc. (“Pacifica”) submits the following Separate Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

ISSUES APPROPRIATE FOR SUMMARY JUDGMENT

Moving Party’s Undisputed Material Facts and Supporting Evidence	Opposing Parties’ Response and Supporting Evidence
<p>1. Pacifica is a California nonprofit public benefit corporation started by pacifists in 1946. (Schwartz Decl. ¶ 4.)</p>	
<p>2. Pacifica is run in accordance with its Bylaws and the California Corporation Code. (Schwartz Decl. ¶ 6, Ex. 1.)</p>	
<p>3. The terms of Petitioner’s employment with Pacifica were set forth in an employment letter (the “Employment Letter”) and an employment Agreement (the “Agreement”). (Schwartz Decl. ¶ 14, Ex. 2, Ex. 3.)</p>	
<p>4. By consenting to binding arbitration, the Parties expressly agreed that in the unlikely event of a dispute between Pacifica and Petitioner “<i><u>arising out of [Petitioner’s] employment or the termination of employment</u></i>” Pacifica and Petitioner would submit their dispute to final and binding arbitration. (Schwartz Decl. ¶ 16, Ex. 2, pg. 2; Ex.</p>	

1		3, pg. 6 (emphasis added).)	
2			
3	5.	Pacifica terminated Petitioner's employment on November 14, 2019.	
4		(Schwartz Decl. ¶¶ 28, 30, Ex. 9.)	
5			
6	6.	On November 15, 2019, Petitioner submitted his initial demand for arbitration to Pacifica (the "Initial Arbitration Demand").	
7		(Schwartz Decl. ¶ 29, Ex. 8.)	
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11	7.	In or around May 2020, Petitioner formally initiated an arbitration proceeding (the "Arbitration Proceeding") with the American Arbitration Association (the "AAA") as Case No. 01-20-00052636.	
12		(Schwartz Decl. ¶ 32, Ex. 11.)	
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18	8.	Once Petitioner invoked AAA jurisdiction the proceeding fell under AAA Employment Arbitration Rules.	
19		(Schwartz Decl. ¶¶ 32, 38 Ex. 16.)	
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21			
22	9.	On September 11, 2020, Dana Welch ("Arbitrator Welch") was appointed was appointed by AAA to act as the sole arbitrator in the parties' employment dispute.	
23		(Schwartz Decl. ¶ 33.)	
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28	10.	Following the initiation of the	

1	arbitration proceeding, Pacifica	
2	initiated a counterclaim against	
3	Petitioner within the Arbitration	
4	Proceeding (the “Counterclaim”).	
5	(Schwartz Decl. ¶ 34, Ex. 12.)	
6	11. On June 28, 2021, Arbitrator Welch	
7	issued an initial scheduling order (the	
8	“Initial Scheduling Order”).	
9	(Schwartz Decl. ¶ 35, Ex. 13.)	
10	12. Petitioner submitted his Pre-Hearing	
11	Brief on December 2, 2021.	
12	(Schwartz Decl. ¶ 36, Ex. 14.)	
13		
14	13. Petitioner’s Pre-Hearing Brief did not	
15	set out the factual predicate for a	
16	defamation claim, did not discuss	
17	defamation in its legal analysis, and	
18	did not ask for damages for	
19	defamation.	
20	(Schwartz Decl. ¶ 36, Ex. 14.)	
21	14. Pacifica filed its Pre-Hearing Brief on	
22	December 3, 2021.	
23	(Schwartz Decl. ¶ 37, Ex. 15.)	
24	15. Pacifica’s Pre-Hearing Brief, like	
25	Petitioner’s, did not discuss	
26	defamation.	
27	(Schwartz Decl. ¶ 37, Ex. 15.)	
28	16. The AAA Rules do not allow an	

1		amendment of a claim, or the amount of damages sought, without 14-days' notice to the other party. (Schwartz Decl. ¶ 38, Ex.16.)	
2			
3	17.	Each party submitted a list of exhibits that they intended to rely on in the Arbitration Proceeding. (Schwartz Decl. ¶ 39, Ex. 17, Ex. 18.)	
4			
5	18.	Petitioner's exhibit list included five tape recordings identified as being from 2020 and 2021. (Schwartz Decl. ¶ 39, Ex. 17.)	
6			
7	19.	Pacifica filed an objection to Petitioner's exhibit list. (Schwartz Decl. ¶ 39, Ex. 19.)	
8			
9	20.	Petitioner revised his list of exhibits in response to Pacifica's objections. (Schwartz Decl. ¶ 39, Ex. 20.)	
10			
11	21.	Pacifica again objected and the arbitrator left resolution of those objection to be addressed as and if the objected to exhibits were introduced during the hearing. (Schwartz Decl. ¶ 39, Ex. 21.)	
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13	22.	The hearings in the Arbitration Proceeding were held December 13-17, 2021 and continued to January 12	
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1	and 25, 2022.	
2	(Schwartz Decl. ¶ 40.)	
3		
4	23. The Arbitration Proceeding was taped	
5	recorded but not transcribed in real	
6	time.	
7	(Schwartz Decl. ¶ 40.)	
8		
9	24. Under AAA Rules transcripts were	
10	not permitted without consent and the	
11	transcript required approval of the	
12	arbitrator; no such consent or approval	
13	was given.	
14	(Schwartz Decl. ¶ 40, Ex. 16, pg. 18,	
15	Rule 20.)	
16		
17	25. At no point during Petitioner's case-	
18	in-chief did he present testimony,	
19	witnesses or documents concerning	
20	defamation, except to the extent that	
21	he submitted a copy of his October 12,	
22	2019 complaint to Pacifica's Human	
23	Resources Director, and briefly	
24	discussed it.	
25	(Schwartz Decl. ¶ 41.)	
26		
27	26. A small portion of testimony from the	
28	hearing held on January 12, 2022 was	
	transcribed, without agreement by	
	Petitioner's counsel in this case on or	
	about May 27, 2022 (the "January 12,	
	2022 Transcript), and mislabeled as	
	testimony from January 20, 2022 (a	
	date where there was no hearing).	
	(Schwartz Decl. ¶ 42, Ex. 22.)	

1		
2	27.	During this portion of Petitioner's
3		testimony, as part of Respondent's
4		rebuttal case, Petitioner's attorney
5		withdrew any "intentional infliction of
6		emotional distress claim, and stated
7		with respect to any defamation claim:
8		"I think the same - well, there has
9		been some evidence that has come in
10		on defamation, I think we should
		leave that in for now."
		(Schwartz Decl. ¶ 42, Ex. 22.)
11	28.	Prior to the close of testimony,
12		exhibits were admitted either by
13		stipulation or upon motion of the
14		exhibit's proponent.
15		(Schwartz Decl. ¶ 43.)
16	29.	At the conclusion of oral testimony
17		from both sides, Arbitrator Welch
18		issued an order regarding the
19		submission of additional
20		documentation that had not previously
21		been introduced through witnesses
22		during the Arbitration Proceeding (the
23		"Post-Testimony Order").
		(Schwartz Decl. ¶ 44, Ex. 23.)
24	30.	In response to the Post-Testimony
25		Order, Petitioner submitted a list of a
26		number of exhibits which included
27		nine audio files to be considered by
28		Arbitrator Welch (the "Audio Files"),
		and stated that they were being
		submitted in order to prove

1	defamation.	
2	(Schwartz Decl. ¶ 45.)	
3		
4	31. Pacifica objected to Arbitrator Welch	
5	considering the Audio Files because	
6	Respondent Pacifica had not been put	
7	on notice about this new post-	
8	termination claim.	
9	(Schwartz Decl. ¶ 45, Ex. 24.)	
10	32. Since not one witness had been put on	
11	the stand to testify about this claim,	
12	Pacifica had had no opportunity to	
13	address the alleged defamation claim	
14	through witnesses, or through cross-	
15	examination of Petitioner or his	
16	witnesses about the statements	
17	complained of and the elements	
18	Petitioner needed to establish to prove	
19	his defamation claim, or to address	
20	whatever affirmative defenses Pacifica	
21	may have had.	
22	(Schwartz Decl. ¶ 45, Ex. 24.)	
23		
24	33. Arbitrator Welch overruled Pacifica's	
25	objections and considered the Audio	
26	Files.	
27	(Schwartz Decl. ¶ 46, Ex. 25.)	
28		
	34. In response, Pacifica demanded that	
	the record be reopened for additional	
	testimony on this new claim.	
	(Schwartz Decl. ¶ 47, Ex. 26.)	

1	35.	Arbitrator Welch responded with Scheduling Order No. 4 which simply allowed for the submission of rebuttal briefs.	
2		(Schwartz Decl. ¶ 50, Ex. 29.)	
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5			
6	36.	Pacifica's counsel again demanded that the hearing record be reopened due to the lack of notice or opportunity to explore the claim and present relevant testimony.	
7		(Schwartz Decl. ¶ 49, Ex. 28.)	
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12	37.	Each party submitted closing briefs pursuant to Arbitrator Welch's briefing schedule; Pacifica could not address the defamation claim at all until it submitted its Rebuttal Brief.	
13		(Schwartz Decl. ¶ 51, Ex. 30, Ex. 31.)	
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17	38.	Each party submitted rebuttal briefs pursuant to Arbitrator Welch's briefing schedule.	
18		(Schwartz Decl. ¶ 53, Ex. 32, Ex. 33.)	
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22	39.	On April 18, 2022, following the conclusion of the Arbitration Proceeding, Arbitrator Welch issued a 41-page written award (the "Arbitration Award").	
23		(Schwartz Decl. ¶ 54, Ex. 34.)	
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28	40.	In the award, Arbitrator Welch denied all claims that Petitioners firing had	

1	been unlawful, but found that he had	
2	been denied in a December 20, 2019	
3	broadcast in NYC where a WBAI staff	
4	member alleged that he had engaged	
5	in a “coup” and had a plan to sell the	
6	station. She found this to be	
7	defamation “per se,” found that	
8	“Constitutional malice: had been	
9	established because WBAI staff	
10	members were hostile toward	
11	Petitioner.	
12	(Schwartz Decl. ¶ 54-56, Ex. 34-35.)	
13		
14	41. On April 19, 2022, Petitioner	
15	commenced this civil action (the	
16	“Petition”) seeking an order	
17	confirming the Arbitration Award.	
18	(Schwartz Decl. ¶ 57; Dckt. No. 1.)	
19		
20	42. Pacifica opposed the Petition and is	
21	seeking an order vacating the	
22	Arbitration Award.	
23	(Schwartz Decl. ¶ 57; Dckt. No. 16.)	
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Dated: August 1, 2022

FOR PURPOSE LAW GROUP

By: /s/ Matthew B. Learned
 Matthew B. Learned, Esq.
 Attorney for Respondent,
 Pacifica Foundation Inc.

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1 Dated: August 1, 2022

**ADVOCATES FOR JUSTICE,
CHARTERED ATTORNEYS**

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3 By: /s/ Arthur Z. Schwartz
4 Arthur Z. Schwartz, Esq.
5 Proposed Attorney for Respondent,
6 Pacifica Foundation Inc., *Pro Hac Vice*
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